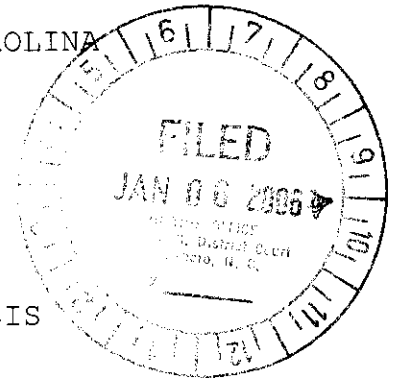


IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA : 1:05CR372-1
V. :
JIMMY JAMES WITHERSPOON : FACTUAL BASIS



COMES NOW, the United States of America, by and through Anna Mills Wagoner, United States Attorney, and shows unto the Court the following factual basis in support of the defendant's plea of guilty to the charges herein:

On February 13, 2005, Ms. Deasia Williams called her father, Stacy Wyatt, to help her move out of the residence she shared with Jimmy James Witherspoon. While helping his daughter, Mr. Wyatt saw Witherspoon leave the house, and return carrying a rifle. Witherspoon discharged the rifle. Officer O'Hal, with the Greensboro Police Department heard the shot and began to respond. As Officer O'Hal turned from Winston Street onto Charlotte Street, he saw a black male wearing a gray hooded sweatshirt run into the residence at 2305 Charlotte Street. Mr. Wyatt and Ms. Williams told officers that there had been an argument between Witherspoon and Ms. Williams and that Witherspoon had hit her several times. Officers noted that she had abrasions on her face, neck, throat, and knee; she also had bruising on her forearm and the back of her head.

After a perimeter was set up at this location, officers gave a warning that the K-9 would be checking the crawl space. The dog retrieved Timberland boots from the crawl space. Gas was thrown into the area and Witherspoon shortly thereafter surrendered without further incident. The residence was searched, but no firearm was located. Officer O'Hal checked the crawl space and located a Winchester .30-30 rifle, model 94AE, serial number 5324785, with one round in the chamber. This weapon as well as a spent shell casing from the porch were collected as evidence.

Crime Scene Investigator Carlton Phoenix compared the shell casing to a test-fired shell casing from the same weapon. Under a comparison microscope with a side to side comparison, there were sufficient numbers of similarities to recommend further testing by the SBI crime lab. S.D. Greene, a ballistics expert with the SBI, compared the fired cartridge case from the Winchester .30-30 rifle with a fired cartridge case located at the scene and determined that the recovered case was "worked through the action" of the Winchester .30-30 caliber rifle, serial number 5324785.

At the time of the commission of the instant offense, Jimmy James Witherspoon had previously been convicted on May 4, 1994, of four counts of robbery with a dangerous weapon, violent felonies, occurring on at least three different occasions. He

was also convicted on May 22, 2001, of sell and deliver cocaine, possession with intent to sell and deliver cocaine, felony conspiracy to sell and deliver cocaine as well as felony possession of cocaine. Witherspoon was convicted on December 20, 2002, of possession with intent to sell and deliver cocaine and marijuana. Defendant's convictions have not been expunged or set aside, nor has he been pardoned or had his civil rights restored.

The Winchester .30-30 caliber rifle was test-fired by Special Agent Matt Amato with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and functioned as designed. Special Agent Ernie Driver with ATF, an expert in the field of interstate nexus, determined that the firearm was manufactured in Connecticut; therefore it affected interstate commerce.

This the 5th day of January, 2005.

Respectfully submitted,

ANNA MILLS WAGONER
United States Attorney



LISA B. BOGGS
Assistant United States Attorney
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Factual Basis was served upon the person hereinafter named, either personally or by placing a copy of the aforementioned document in the United States Mail addressed as follows:

Addressee:

William S. Trivette,
Assistant Federal Public Defender
101 S. Elm Street, Suite 210
Greensboro, N.C. 27401

This the 5th day of January, 2005.



Lisa B. Boggs
Assistant United States Attorney
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